

# **Exhibit D**

Page 1

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3  
4 MANBRO ENERGY CORPORATION,  
5 individually and on behalf of  
5 all those similarly situated,

6 Plaintiffs,

Case No.

7 vs.

20 Civ. 3773 (LGS)

8 CHATTERJEE ADVISORS, LLC,  
9 CHATTERJEE FUND MANAGEMENT, LP,  
9 CHATTERJEE MANAGEMENT COMPANY,  
10 d/b/a THE CHATTERJEE GROUP, and  
10 PURNENDU CHATTERJEE,

11 Defendants.

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14 \*\*\* CONFIDENTIAL \*\*\*  
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17 VIDEOTAPED DEPOSITION OF BRADLEY S. SMITH

18 Via Remote Videoconference

19 Thursday, April 22, 2021

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21

22

23 Stenographically Reported By:

24 Paula S. Raskin, CSR-4757

25 Job No. 192804

<p style="text-align: right;">Page 46</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       A.    Above 25?</p> <p>3       Q.    Yes.</p> <p>4       A.    I'm sorry, could you -- you said</p> <p>5      25 grand?</p> <p>6       Q.    25 million.</p> <p>7       A.    Okay, 25 million. Manbro would.</p> <p>8      Well, no, I don't know what would happen at that</p> <p>9      point. We could -- we have the ability under</p> <p>10     the Manbro documents to request contributions</p> <p>11     from the various shareholders of Manbro.</p> <p>12     Q.    So you had earlier described that</p> <p>13     Manbro Energy has approximately 25 million</p> <p>14     dollars in net worth. How much of that is</p> <p>15     liquid or cash?</p> <p>16     A.    Probably not very much at this point.</p> <p>17     Q.    Can you estimate for me how much is</p> <p>18     liquid or cash?</p> <p>19     A.    No, I don't -- I don't have those --</p> <p>20     I don't have those numbers.</p> <p>21     Q.    Do you know if it's above or lower</p> <p>22     than 1 million dollars?</p> <p>23     A.    I would assume that we have cash of</p> <p>24     less than 1 million dollars in Manbro. We</p> <p>25     typically don't keep a lot of cash.</p>	<p style="text-align: right;">Page 47</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Q.    How has Manbro Energy been financing</p> <p>3      or paying the legal fees for this lawsuit given</p> <p>4      less than 1 million dollars in cash on hand?</p> <p>5       A.    The fees are being paid as cash comes</p> <p>6      in from other sources. It is in liquidation</p> <p>7      mode and we have the original money that they</p> <p>8      sent us.</p> <p>9       Q.    What does that mean that you have the</p> <p>10     original money --</p> <p>11     A.    Well, the 2.3 million dollars that</p> <p>12     they tried to buy us out with.</p> <p>13     Q.    So you're using the 2.3 million</p> <p>14     dollar final distribution to finance part of the</p> <p>15     legal fees? Is that correct?</p> <p>16     A.    Yes.</p> <p>17     Q.    And how much of the 25 million</p> <p>18     dollars or so in assets of Manbro Energy is in</p> <p>19     illiquid, unmarketable assets?</p> <p>20     A.    Most of it is in illiquid and</p> <p>21     unmarketable assets.</p> <p>22     Q.    How does Manbro Energy plan to</p> <p>23     finance this lawsuit in the event that it cannot</p> <p>24     liquidate assets?</p> <p>25     A.    We will either do a capital call from</p>
<p style="text-align: right;">Page 48</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2      the existing partners or we have lines of</p> <p>3      credit.</p> <p>4       Q.    Has anybody discussed doing capital</p> <p>5      calls from the existing partners in order to</p> <p>6      finance this litigation with the partners?</p> <p>7       A.    No.</p> <p>8       Q.    Do the partners have to provide</p> <p>9      capital calls if one is made?</p> <p>10      A.    Yes.</p> <p>11      Q.    Nondiscretionary?</p> <p>12      A.    Nondiscretionary.</p> <p>13      Q.    Who gets to decide whether to make a</p> <p>14      capital call?</p> <p>15      A.    Who gets to decide whether to make a</p> <p>16      capital call?</p> <p>17      Q.    Yes.</p> <p>18      A.    It would be the board of Manbro.</p> <p>19      Q.    Who's on the board of Manbro?</p> <p>20      A.    I'm not sure of the exact members.</p> <p>21      Myself, I think Jon McCloskey's on, Jim Fox is</p> <p>22      probably on. It's officers of Parkwood.</p> <p>23      Q.    Has the board of Manbro Energy</p> <p>24      discussed this lawsuit at board meetings?</p> <p>25      A.    Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Q.    And are those board meetings -- do</p> <p>3      you keep minutes of those board meetings?</p> <p>4       A.    Not at this point, no.</p> <p>5       Q.    Okay. So does anybody take notes of</p> <p>6      board meetings?</p> <p>7       A.    No.</p> <p>8       Q.    How many board meetings do you have a</p> <p>9      year?</p> <p>10      A.    I'm not certain. We don't</p> <p>11     necessarily have formal board meetings, not in</p> <p>12     the sense that you think. It's an investment,</p> <p>13     in wind-down mode.</p> <p>14      Q.    When was the first time you all</p> <p>15     discussed the financing of this lawsuit at a</p> <p>16     board meeting?</p> <p>17      A.    Financing of this lawsuit has never</p> <p>18     been talked about at a board meeting.</p> <p>19      Q.    Has there been a discussion with the</p> <p>20     other board members, Mr. McCloskey and Mr. Fox,</p> <p>21     about issuing a capital call if needed from the</p> <p>22     existing partners of Manbro Energy?</p> <p>23      A.    No.</p> <p>24      Q.    So just so I understand, when you</p> <p>25     stated that the board would issue a capital</p>

<p style="text-align: right;">Page 142</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       A. I believe they did.</p> <p>3       Q. And what, if anything, did Emissary</p> <p>4 Holdings do to obtain such -- attempt to obtain</p> <p>5 such information about other affected limited</p> <p>6 partners?</p> <p>7       A. I do not know.</p> <p>8       MR. WEITZMAN: Let's turn to</p> <p>9 Exhibit 84, which is Defendants'</p> <p>10 Exhibit 12.</p> <p>11           (DEFENDANTS' EXHIBIT 12 MARKED</p> <p>12           FOR IDENTIFICATION at 1:11 p.m.)</p> <p>13 BY MR. WEITZMAN:</p> <p>14       Q. And this again is a printout from the</p> <p>15 Emissary Holdings website, and if you turn to</p> <p>16 Page 3 at the bottom, it says "Case Studies."</p> <p>17 And then on Page 4, the final tab of this case</p> <p>18 study, and it says:</p> <p>19           "Outcome: Our client was made an</p> <p>20 insufficient settlement offer, so opted to</p> <p>21 launch a class action in the Southern</p> <p>22 District of New York. Emissary continues</p> <p>23 to advise them on that."</p> <p>24       Did I read that correctly?</p> <p>25       A. Yes.</p>	<p style="text-align: right;">Page 143</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Q. Was Emissary Holdings involved in the</p> <p>3 decision to quote/unquote launch a class action</p> <p>4 in the Southern District of New York?</p> <p>5       A. I don't know that they were -- they</p> <p>6 weren't -- they had input, but I don't -- they</p> <p>7 were not the decision makers.</p> <p>8       Q. My question, though, is not whether</p> <p>9 they were the decision makers, it's whether they</p> <p>10 were involved in the decision.</p> <p>11       A. I believe they were in the room.</p> <p>12       Q. And what -- did Emissary Holdings,</p> <p>13 were they the ones who suggested that you file</p> <p>14 this as a class action?</p> <p>15       MR. MCDONALD: I'll object actually</p> <p>16 to this question and instruct the witness</p> <p>17 not to answer to the extent that the answer</p> <p>18 would reveal the contents of a conversation</p> <p>19 in a room if that involves lawyers about</p> <p>20 this lawsuit, so...</p> <p>21       MR. WEITZMAN: Are you instructing</p> <p>22 him not to answer?</p> <p>23       MR. MCDONALD: Yes, so I'm</p> <p>24 instructing him not to answer that</p> <p>25 question. If you can ask the question in a</p>
<p style="text-align: right;">Page 144</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 way that doesn't call for the revelation of</p> <p>3 a privileged legal discussion, I'll</p> <p>4 consider it, but that question I am</p> <p>5 instructing him not to answer.</p> <p>6 BY MR. WEITZMAN:</p> <p>7       Q. Are you going to follow your</p> <p>8 counsel's advice, Mr. Smith?</p> <p>9       A. Yes.</p> <p>10      Q. Let me ask it another way then.</p> <p>11      Did Emissary Holdings suggest to you</p> <p>12 that Parkwood and Manbro consider a class action</p> <p>13 lawsuit?</p> <p>14      You may answer.</p> <p>15      THE WITNESS: Mark, would you like me</p> <p>16 to answer?</p> <p>17      MR. MCDONALD: Yes, you can answer</p> <p>18 that question as long as you in doing so do</p> <p>19 not reveal the contents of any</p> <p>20 communications that you had with counsel or</p> <p>21 that were made in the presence of counsel,</p> <p>22 in a room with counsel.</p> <p>23 BY MR. WEITZMAN:</p> <p>24      Q. Can you answer the question,</p> <p>25 Mr. Smith?</p>	<p style="text-align: right;">Page 145</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       A. I don't believe Emissary made any</p> <p>3 recommendations.</p> <p>4       Q. Parkwood -- is it fair to say that</p> <p>5 Parkwood understood that a class action would</p> <p>6 have greater potential financial ramifications</p> <p>7 to defendants than just pursuing a single</p> <p>8 lawsuit on behalf of Manbro Energy?</p> <p>9       A. Yes.</p> <p>10      Q. And is it fair to say that part of</p> <p>11 the reason why Manbro decided to pursue this</p> <p>12 lawsuit as a class action was to impose the</p> <p>13 greatest threat of financial harm to defendants?</p> <p>14      MR. MCDONALD: I object to that</p> <p>15 question.</p> <p>16 BY MR. WEITZMAN:</p> <p>17      Q. You may answer, sir.</p> <p>18      A. Obviously.</p> <p>19      Q. And is it fair to say that Parkwood</p> <p>20 and Manbro never reached out to any of the other</p> <p>21 limited partner investors before asking to sue</p> <p>22 on their behalf, correct?</p> <p>23      MR. MCDONALD: Object to the form.</p> <p>24      A. Manbro or Parkwood could not reach</p> <p>25 out to the other investors because we did not</p>

<p style="text-align: right;">Page 150</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2       A. I'm -- I'm not questioning whether      3 Emissary requested this or whether Manbro did or      4 what Matt did. I'm simply saying I don't have      5 any knowledge of this.</p> <p>6       Q. To your knowledge, did Parkwood      7 authorize Emissary Holdings to communicate with      8 the press on behalf of Manbro and Parkwood?</p> <p>9       A. Yeah, I think we did.</p> <p>10      Q. Okay. Tell me about that      11 authorization. When --</p> <p>12      MR. MCDONALD: Avi, can you explain      13 to me which deposition topic this falls      14 under because I'm not seeing it, and I      15 really don't think that this is within the      16 scope of the deposition that you noticed.</p> <p>17      MR. WEITZMAN: Well, it goes to      18 Parkwood's roles, duties, responsibilities,      19 and authorities, first of all, and it also      20 goes into Topic 6, the investigation,      21 assessment, analysis, evaluation, research,      22 due diligence, monitoring or other review      23 of defendants performed by you or on your      24 behalf. It goes into any number of topics      25 that concern how this case has been</p>	<p style="text-align: right;">Page 151</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2 prosecuted, and I'd just --</p> <p>3       MR. MCDONALD: In other words, it      4 doesn't go into any topic. So I suggest      5 that we either move on -- you know, I      6 reserve the right to strike all of this      7 testimony as outside of the scope of the      8 30(b)(6) notice that you and we discussed      9 and negotiated before this deposition.</p> <p>10      It's not appropriate to then ask a      11 bunch of questions of a 30(b)(6) witness,      12 particularly when you insisted that this      13 would be separate and apart from any      14 individual witness on behalf of Mr. Smith,      15 but --</p> <p>16      MR. WEITZMAN: I've been very clear      17 that my view is that this doesn't obviate      18 an individual deposition of Mr. Smith, but      19 it doesn't also preclude asking --</p> <p>20      MR. MCDONALD: You don't get two      21 depositions of the same witness, okay?      22 That's not how it works.</p> <p>23      MR. WEITZMAN: Mr. McDonald, can I      24 finish?</p> <p>25      This doesn't obviate my right to ask</p>
<p style="text-align: right;">Page 152</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2       Mr. Smith questions that he may know the      3 answers to in his personal capacity.</p> <p>4 BY MR. WEITZMAN:</p> <p>5       Q. So let me ask you again, sir --</p> <p>6       MR. WEITZMAN: And I believe this is      7 covered by a number of topics, and we can      8 deal with that afterwards if you want to      9 move to strike.</p> <p>10 BY MR. WEITZMAN:</p> <p>11      Q. When did you or Parkwood authorize      12 Emissary Holdings to communicate with the press      13 on your behalf?</p> <p>14      MR. MCDONALD: Object to the form.</p> <p>15      THE WITNESS: Am I allowed to answer?</p> <p>16      MR. MCDONALD: You can answer that.</p> <p>17      A. I don't know that Parkwood did do      18 that. Parkwood may have. Jon may have said      19 something, but I do not know.</p> <p>20 BY MR. WEITZMAN:</p> <p>21      Q. Did you participate in any      22 conversation in which Jon McCloskey authorized      23 Emissary Holdings to communicate with the press?</p> <p>24      A. No.</p> <p>25      Q. Okay. Was there an effort on the</p>	<p style="text-align: right;">Page 153</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2 part of Manbro to broaden the press outreach      3 regarding this lawsuit in order to put pressure      4 on Chatterjee to settle this lawsuit?</p> <p>5       MR. MCDONALD: Objection.</p> <p>6       A. I'm sure there was.</p> <p>7 BY MR. WEITZMAN:</p> <p>8       Q. Is it fair to say that there was an      9 effort on the part of Parkwood and Manbro to get      10 press coverage of this lawsuit in order to cause      11 Chatterjee some reputational harm?</p> <p>12      MR. MCDONALD: Objection.</p> <p>13      A. Yes.</p> <p>14 BY MR. WEITZMAN:</p> <p>15      Q. What is it that Emissary Holdings, to      16 your knowledge, told the media and the press      17 regarding Dr. Chatterjee?</p> <p>18      A. I don't know.</p> <p>19      MR. WEITZMAN: Let's take -- we'll      20 move on for now. I'm reserving the right      21 to come back to this.</p> <p>22 BY MR. WEITZMAN:</p> <p>23      Q. Manbro's an accredited investor,      24 correct?</p> <p>25      A. At the time of the investment, it</p>

<p style="text-align: right;">Page 206</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Q. This is a document that Manbro kept 3 and maintained in the -- I'm sorry, that 4 Parkwood kept and maintained in the ordinary 5 course, correct?</p> <p>6       A. Yes.</p> <p>7       Q. So if you look at the first bullet 8 point, in 2003 it was reported to Parkwood, and 9 it said:</p> <p>10       "Overall net asset value declined 11 some 36 percent in 2002, mainly as the 12 result of marking down the telecom ventures 13 as well as the value of the aircraft, 727s 14 and A300s, to zero since the amount of debt 15 was greater than the likely resale value of 16 the aircraft. This markdown left the 17 petrochemical plant, Haldia, some 18 80 percent of the portfolio's remaining 19 value."</p> <p>20       Do you see that?</p> <p>21       A. Yes.</p> <p>22       Q. So as we just discussed, not only did 23 Manbro and Parkwood understood that these were 24 risky investments without any guarantees, 25 several of the investments actually were written</p>	<p style="text-align: right;">Page 207</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2 down to zero, correct?</p> <p>3       A. Yes.</p> <p>4       Q. And when -- what does it mean to 5 write down an asset to zero?</p> <p>6       A. That means that you believe that the 7 entire value has gone away.</p> <p>8       Q. And so a multiple of WPPE's 9 investments had debt greater than the value of 10 the asset, right?</p> <p>11       A. I'm not familiar -- all that familiar 12 with the assets, but if that's what the memo 13 says, yes, yes, that's -- that would make sense.</p> <p>14       Q. Now, in 2003, there was an 15 understanding, sir, that the Haldia investment 16 comprised 80 percent of the remaining value of 17 WPPE, correct?</p> <p>18       A. Yes.</p> <p>19       Q. And is it fair to say that Manbro and 20 Parkwood understood that the Haldia investment 21 itself was a very risky investment?</p> <p>22       A. Yes.</p> <p>23       Q. And, in fact -- let me withdraw that. 24                   I know it says the title of the 25 company's Manbro Energy.</p>
<p style="text-align: right;">Page 208</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Did Manbro have any prior history in 3 the petrochemical industry?</p> <p>4       A. Not of that nature, no.</p> <p>5       Q. Did Manbro have any history of 6 investments in India?</p> <p>7       A. I am not certain if we had other 8 investments in India.</p> <p>9       Q. There was an understanding, sir, that 10 Haldia had a very large debt burden, correct, as 11 of (audio distortion)?</p> <p>12       (Reporter clarification.)</p> <p>13       Q. 2003 Haldia had a very large debt 14 burden, correct, sir?</p> <p>15       A. Is that what it says here?</p> <p>16       Q. You can read the second bullet point 17 to yourself.</p> <p>18       A. Okay.</p> <p>19       Q. Is that correct? Is that Parkwood's 20 understanding in 2003?</p> <p>21       A. Yes.</p> <p>22       Q. And, in fact, the debt burden was so 23 extensive that it required a markdown of the net 24 asset value of the asset, correct?</p> <p>25       A. Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH</p> <p>2       Q. And in the third bullet point, it 3 says, quote/unquote:</p> <p>4                   "Because Mr. Chatterjee has a great 5 deal of his personal net worth in this 6 asset, perhaps 50 percent, he has been 7 spending 70 percent of his time in India 8 working on restructuring the debt. 9 Naturally the lenders are reluctant to do 10 so since they would like to gain control of 11 this asset. Winston, with three-sevenths 12 of the equity and another group close to 13 Chatterjee with one-seventh, have been 14 working together, but it looks as though 15 Chatterjee himself will have to inject more 16 equity."</p> <p>17       Did I read that correctly?</p> <p>18       A. That is what's written, yes.</p> <p>19       Q. Fair to say, sir, that Parkwood 20 understood that Chatterjee was investing a lot 21 of his own personal time and resource in an 22 effort to improve the position of Haldia, right?</p> <p>23       A. At this particular time, yes.</p> <p>24       Q. And that effort would have benefited 25 investors like you all in WPPE, right?</p>

<p style="text-align: right;">Page 210</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2           MR. MCDONALD: Objection.      3           A. Yes.      4 BY MR. WEITZMAN:      5           Q. And according to this paragraph,      6 Parkwood was aware, sir, that the lenders were      7 reluctant to restructure the debt, right?      8           A. Yes.      9           Q. And one of the reasons why lenders      10 are reluctant to restructure debt is because      11 they want to take control of the asset      12 themselves, right?      13          A. Yes.      14          Q. Is it fair to say that Parkwood and      15 Manbro Energy understood at this time in 2003      16 that there was a risk that the lenders would      17 take control of the asset themselves?      18          A. Yes.      19          Q. And if the lenders had taken control      20 of the asset themselves, what would that have      21 done to Manbro Energy's investment in WPPE?      22          A. Probably would have wiped it out.      23          Q. So Chatterjee in 2003 was working      24 very hard, in Parkwood's knowledge, to prevent      25 that from happening, correct?</p>	<p style="text-align: right;">Page 211</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2           A. Yes.      3           Q. But Manbro and Parkwood understood,      4 sir, that there was a risk that it could be      5 completely wiped out due to the lenders taking      6 over Haldia in -- as of 2003, correct?      7           A. Yes.      8           Q. And was there any assessment of how      9 significant that risk was to Manbro Energy and      10 Parkwood, as well as Haldia?      11          A. I don't believe there would have been      12 an assessment of the risk.      13          Q. Needless to say, it was communicated      14 to Parkwood investor -- the investment committee      15 and Parkwood that this was not a good investment      16 for Manbro Energy, correct?      17          A. Yes.      18          Q. In the last paragraph, Mr. Ehrlich      19 says:      20                 "Clearly this was not a good      21 investment, but the remaining stub probably      22 should be held since it is, A, illiquid; B,      23 could be sold only at a steep discount from      24 present NAV; and C, that NAV probably is      25 well undervalued."</p>
<p style="text-align: right;">Page 212</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2           Do you see that?      3           A. Yes.      4           Q. Does the fact that Harold Ehrlich      5 said to you -- said to Parkwood that the      6 investment could be sold at a steep discount      7 from present NAV, does that indicate -- does      8 that refresh your recollection that in fact      9 Parkwood could have opted to sell its investment      10 or withdraw its investment, redeem, from WPPE?      11          MR. MCDONALD: Objection.      12          A. That -- that statement does not      13 necessarily mean that, and it certainly does not      14 mean that in our context.      15          It is likely that Harold was thinking      16 that -- or it's possible that Harold was      17 thinking that this could have been sold to a      18 secondary buyer, this could have been sold to a      19 third party. To require that would do a      20 substantial discount, but this doesn't mean that      21 we had the right to withdraw at a discount.      22 BY MR. WEITZMAN:      23          Q. If you go up to the next bullet      24 point, the fourth bullet point, it says:      25                 "Interest on the Haldia debt is being</p>	<p style="text-align: right;">Page 213</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2           paid partly by the Chatterjee group of      3 funds, but Chatterjee's management company      4 is paying the bulk."      5                 Do you see that?      6           A. Yes.      7           Q. You understood that Dr. Chatterjee      8 and his affiliated entities were personally      9 paying the bulk of the interest on Haldia's      10 debt, not requiring those payments from WPPE and      11 other funds, correct?      12          MR. MCDONALD: Objection.      13          A. That is what the memo indicates, yes.      14 BY MR. WEITZMAN:      15          Q. You'd also agree with me, sir, that      16 Dr. Chatterjee -- there was no legal requirement      17 at this time for him to do all this work to save      18 Haldia, correct?      19          MR. MCDONALD: Objection.      20          A. Part of the -- it's all about who and      21 why do you want to invest with people who have      22 skin in the games is because they have a      23 personal interest, and so this would have been      24 one of the reasons that we were willing to take      25 the risk in such an illiquid, risky investment</p>

<p style="text-align: right;">Page 214</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2 because we knew that he would do whatever he      3 could to benefit the company, and then we would      4 benefit because of our investment side by side      5 with him.</p> <p>6       MR. WEITZMAN: Move to strike.</p> <p>7 BY MR. WEITZMAN:</p> <p>8       Q. I'm going to ask you again the      9 question that I want answered, which is      10 Dr. Chatterjee had no legal requirement to      11 invest his time and resources, personal      12 resources, to try to save Haldia, correct?</p> <p>13       MR. MCDONALD: Objection to asking      14 the witness for a legal conclusion. If      15 you're asking him what the contract says,      16 the contract will speak for itself.</p> <p>17       But go ahead and answer it if you      18 can, Mr. Smith.</p> <p>19       A. I have no idea.</p> <p>20 BY MR. WEITZMAN:</p> <p>21       Q. There was nothing in the fund      22 documents for WPPE that required Chatterjee to      23 invest his personal assets above and beyond his      24 investment in WPPE in an effort to improve      25 Haldia, correct?</p>	<p style="text-align: right;">Page 215</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2                    MR. MCDONALD: Same objection.      3       A. There's nothing that I'm aware of,      4 no.</p> <p>5                    MR. WEITZMAN: Okay. Let's go to      6 Tab 36 and mark this as Exhibit 19.</p> <p>7                    (DEFENDANTS' EXHIBIT 19 MARKED      8                    FOR IDENTIFICATION at 2:47 p.m.)</p> <p>9 BY MR. WEITZMAN:</p> <p>10       Q. Do you recognize this document?      11      A. I do not recognize this document.      12       Q. Do you recognize this as a document      13 that Manbro produced to the defendants?      14      A. I don't actually recognize this as a      15 document that Manbro produced for the      16 defendants, but I'm willing to accept that.</p> <p>17       MR. MCDONALD: We'll stipulate to      18 that.</p> <p>19 BY MR. WEITZMAN:</p> <p>20       Q. Do you recognize this as a      21 communication from Chatterjee, Winston Partners,      22 to Parkwood regarding the net asset value of the      23 investment as of October 2006?</p> <p>24       MR. MCDONALD: I'll just say are you      25 referring to the first page? Because it's</p>
<p style="text-align: right;">Page 216</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2 a multi-page document, at least in my      3 binder.</p> <p>4       MR. WEITZMAN: I am referring to the      5 first page.</p> <p>6       A. Yes.</p> <p>7       (Off the written record.)</p> <p>8 BY MR. WEITZMAN:</p> <p>9       Q. So this is a collection, sir, of net      10 asset value disclosures dated from 2006 through      11 2017, correct? You can scan through the pages.</p> <p>12      A. Yes.</p> <p>13      Q. And each of these was kept and      14 maintained by Manbro in the normal course,      15 correct?</p> <p>16      A. Yes.</p> <p>17      Q. In the second paragraph on the first      18 page, it states that:</p> <p>19        "The unaudited net asset value of      20 your investments, after accrual of your      21 distribution management fees and expenses,      22 is as follows."</p> <p>23       Do you see that?</p> <p>24      A. Yes.</p> <p>25      Q. And, in fact, on each one of these</p>	<p style="text-align: right;">Page 217</p> <p>1       CONFIDENTIAL - BRADLEY S. SMITH      2 pages it references an unaudited net asset value      3 of the investment. Do you see that?</p> <p>4       A. Yes.</p> <p>5       Q. So between 2006 and 2017, Chatterjee      6 disclosed to Parkwood every year at least that      7 there was an unaudited net asset value for the      8 investment, correct?</p> <p>9       MR. MCDONALD: Objection.</p> <p>10      A. Yes.</p> <p>11 BY MR. WEITZMAN:</p> <p>12      Q. And what did it mean to you or to      13 Parkwood that the net asset value -- these net      14 asset value reports were unaudited?</p> <p>15      A. We would have preferred audited, but      16 the unaudited net asset value wouldn't have      17 mattered that much.</p> <p>18      Q. At any point in time prior to 2017,      19 so between 2006 and 2017, did Parkwood or Manbro      20 ever dispute the calculation of net asset value      21 with defendants?</p> <p>22      A. No.</p> <p>23      Q. At any time between 2006 and 2017,      24 did Parkwood or Manbro ever tell defendants that      25 they believed the net asset value calculation</p>

<p style="text-align: right;">Page 326</p> <p>1        CONFIDENTIAL - BRADLEY S. SMITH      2 Parkwood and Manbro regarding whether to sign      3 this release?</p> <p>4        A. There were discussions between      5 Parkwood and Manbro on whether to sign this      6 release.</p> <p>7        Q. And what was the reason why Manbro      8 decided not to sign this release? Without      9 revealing any privileged legal advice, what was      10 the reason?</p> <p>11      A. We did not have adequate comfort with      12 the valuation.</p> <p>13      Q. When you say the valuation, are you      14 referring to the valuation of WPPE --</p> <p>15      A. The valuation of the Haldia shares.</p> <p>16      Q. Did Manbro receive advice from      17 outside counsel regarding this release at any      18 point in time prior to -- in or about 2017 I      19 mean?</p> <p>20      A. I don't remember.</p> <p>21      Q. Okay. It states here in the release:      22 "I" -- and then there's a blank -- "a      23 partner in Winston Partners Private Equity      24 LLC hereby confirm that following my return      25 of this acknowledgement in payment of the</p>	<p style="text-align: right;">Page 327</p> <p>1        CONFIDENTIAL - BRADLEY S. SMITH      2 amount represented in the funds March 31,      3 2017 NAV statement, neither the fund nor      4 the investor shall hold any claims past,      5 present, or future against the other."</p> <p>6           Who did you understand -- who did      7 Manbro understand the fund to refer to?</p> <p>8           MR. MCDONALD: Objection to the      9 extent that that calls for privileged      10 advice or privileged communications. Do      11 you want to put a time frame on that, Avi?</p> <p>12 BY MR. WEITZMAN:</p> <p>13      Q. In May of 2017, who did Manbro      14 understand the fund to refer to?</p> <p>15      MR. MCDONALD: Objection.</p> <p>16           You can answer.</p> <p>17      A. Manbro wouldn't have -- Manbro would      18 have in some sense thought that it was the      19 entire Chatterjee Group; that this wasn't just      20 one particular fund, but this is -- yeah.</p> <p>21 BY MR. WEITZMAN:</p> <p>22      Q. And is it fair to say that Parkwood      23 was concerned that this release would release      24 the entire Chatterjee Group and therefore did      25 not sign the release?</p>
<p style="text-align: right;">Page 328</p> <p>1        CONFIDENTIAL - BRADLEY S. SMITH      2      A. No. Parkwood did not sign the      3 release because we weren't comfortable with the      4 valuation. We didn't know how the shares were      5 valued. A release from an investment manager is      6 not a normal request. We get distributions all      7 the time without such a release request.</p> <p>8      Q. Are you aware -- this release would      9 have been two-directional; the fund would      10 release any claims against the investor and      11 vice-versa, correct?</p> <p>12      A. Yes.</p> <p>13      Q. Fair to say that the -- one of the      14 concerns that Manbro and Parkwood had was they      15 wanted to preserve their ability to sue      16 Dr. Chatterjee and the fund advisor?</p> <p>17      MR. MCDONALD: Objection.</p> <p>18           You can answer.</p> <p>19      A. At this particular point in time, we      20 were not thinking about any of that. At this      21 particular point in time, we were just looking      22 for some type of comfort on the valuation, how      23 was this price determined. That was all we were      24 looking for.</p> <p>25 BY MR. WEITZMAN:</p>	<p style="text-align: right;">Page 329</p> <p>1        CONFIDENTIAL - BRADLEY S. SMITH      2      Q. I understand that. What I'm trying      3 to figure out is what did you understand this      4 release to be requesting? I'm not asking why.      5           What did Parkwood understand -- you      6 as the designee, who did you -- let me just      7 finish. Who did you -- sorry.</p> <p>8           Who did you -- as Parkwood's      9 designee, who did Parkwood believe that this      10 release would extend to?</p> <p>11      MR. MCDONALD: I object to that      12 question unless it's framed as before any      13 advice or discussions with outside counsel.</p> <p>14      MR. WEITZMAN: It is.</p> <p>15 BY MR. WEITZMAN:</p> <p>16      Q. In May -- let me rephrase again. Let      17 me be very clear.</p> <p>18           Without revealing the substance of      19 any legal advice, in May 2017 when Parkwood      20 received this requested release, who did it      21 understand the release was requested to extend      22 to?</p> <p>23      A. I'm still -- I'm not following your      24 question.</p> <p>25      Q. Without revealing the substance of</p>

<p style="text-align: right;">Page 346</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2 action?      3       A. Yes.      4       Q. Why?      5       A. Because we feel like to some extent      6 that the other shareholders were treated      7 unfairly and that they should have a right to      8 the full facts.      9       Q. Does Manbro realize it -- does      10 Manbro -- I'm sorry.      11           Does Manbro understand what its      12 responsibilities are in connection with serving      13 as class representative?      14       A. Yes.      15       MR. MCDONALD: I'll object to that.      16 You're getting into a probably privileged      17 area, Counsel. If there's a question that      18 you want to ask, more targeted perhaps,      19 that would help.      20 BY MR. WEITZMAN:      21       Q. What, if anything, is Manbro doing      22 different from Parkwood? What is Manbro doing      23 to supervise counsel and supervise this      24 litigation?      25       MR. MCDONALD: I'll object to that.</p>	<p style="text-align: right;">Page 347</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2 You can answer.      3       A. I'm not sure Manbro's doing anything.      4 BY MR. WEITZMAN:      5       Q. Has Parkwood ever been a defendant in      6 a lawsuit?      7       A. Not that I'm aware of.      8       Q. Are you aware of that lawsuit in 2019      9 in West Palm Beach filed by Sea Breeze Building      10 against Parkwood Trust Company?      11       A. That was a lawsuit against a trust, a      12 Parkwood Trust Company. It really wasn't a      13 lawsuit against Parkwood. It was a lawsuit      14 against the trust.      15       Q. What was -- sorry, I didn't mean to      16 cut you off. Go ahead.      17       A. The -- we have a lot of generation      18 exempt trusts. The particular trust in question      19 was holding the real estate that was to be      20 purchased and built by the beneficiary. The      21 beneficiary had a dispute with his builder as to      22 the quality of the workmanship.      23           Because we were trustee of the trust,      24 we got brought into the dispute hoping that the      25 beneficiary would cave because he didn't want</p>
<p style="text-align: right;">Page 348</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2 his trustee to be sued.      3       Q. And has that case been resolved?      4       A. The case has been resolved.      5       Q. Were you involved in supervising that      6 case?      7       A. I was involved and at some high      8 level, yes.      9       Q. Were you -- was anybody from Parkwood      10 Trust deposed in that case?      11       A. No.      12       Q. Have there ever been any civil      13 enforcement actions or civil investigations or      14 criminal investigations, for that matter, of      15 anybody at Manbro?      16       A. No. I don't think there has been any      17 of that against anybody at Parkwood.      18       Q. Have Manbro, Parkwood, or any of      19 their employees ever been subject to any      20 sanction by a court in any legal action?      21       A. Not that I'm aware of.      22       Q. Were there any SEC investigations of      23 Manbro or its principals at any point in time,      24 to your knowledge?      25       A. No.</p>	<p style="text-align: right;">Page 349</p> <p>1           CONFIDENTIAL - BRADLEY S. SMITH      2       Q. Has Manbro ever sought litigation      3 funding from a third party to finance this      4 lawsuit?      5       A. No.      6       Q. Did Manbro ever consider seeking      7 litigation funding to finance this lawsuit?      8       A. No.      9       Q. Did Manbro ever consider -- let me      10 rephrase that.      11           Did Parkwood ever seek litigation      12 funding to finance this lawsuit from a third      13 party?      14       A. No.      15       Q. And did Parkwood ever consider      16 selling off all or part of its claim to a third      17 party?      18       A. No.      19       Q. Are you familiar with the entity      20 called Contrarian Capital?      21       A. I believe they are one of our      22 managers or were at one time.      23       Q. And was there any discussion, to your      24 knowledge, with Contrarian Capital regarding      25 financing the lawsuit or selling a portion of</p>

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1	CONFIDENTIAL - BRADLEY S. SMITH		1	CONFIDENTIAL - BRADLEY S. SMITH	
2	C E R T I F I C A T E		2	E X A M I N A T I O N S	
3			3		
4	STATE OF MICHIGAN )		4	WITNESS	PAGE
5	) ss.:		5	BRADLEY S. SMITH	
6	COUNTY OF OAKLAND )		6	EXAMINATION BY MR. WEITZMAN:	6
7			7		
8	I, Paula S. Raskin, a Notary Public		8		
9	within and for the State of Michigan, do		9	E X H I B I T S	
10	hereby certify:		10		
11	That BRADLEY S. SMITH, the witness		11	NUMBER	DESCRIPTION
12	whose deposition is hereinbefore set forth,		12	EXHIBIT 1	TAB 3
13	was duly sworn by me and that such		13	EXHIBIT 2	TAB 4
14	deposition is a true record of the		14	EXHIBIT 3	TAB 78
15	testimony given by such witness.		15	EXHIBIT 4	TAB 5
16	I further certify that I am not		16	EXHIBIT 5	TAB 87
17	related to any of the parties to this		17	EXHIBIT 6	TAB 91
18	action by blood or marriage; and that I am		18	EXHIBIT 7	TAB 8
19	in no way interested in the outcome of this		19	EXHIBIT 8	TAB 10
20	matter.		20	EXHIBIT 9	TAB 81
21	IN WITNESS WHEREOF, I have hereunto		21	EXHIBIT 10	TAB 82
22	set my hand April 23, 2021.		22	EXHIBIT 11	TAB 83
23			23	EXHIBIT 12	TAB 84
24			24	EXHIBIT 13	TAB 85
25	Paula S. Raskin		25	EXHIBIT 14	TAB 6
Page 360			Page 361		
1	CONFIDENTIAL - BRADLEY S. SMITH		1	ERRATA SHEET	
2	EXHIBIT 15 TAB 29	175	2	Case Name:	
3	EXHIBIT 16 TAB 30	187	3	Deposition Date:	
4	EXHIBIT 17 TAB 33	197	4	Deponent:	
5	EXHIBIT 18 TAB 31	205	5	Pg. No. Now Reads	Should Read Reason
6	EXHIBIT 19 TAB 36	215	6	_____	_____
7	EXHIBIT 20 TAB 73	220	7	_____	_____
8	EXHIBIT 21 TAB 74	221	8	_____	_____
9	EXHIBIT 22 TAB 75	221	9	_____	_____
10	EXHIBIT 23 TAB 76	221	10	_____	_____
11	EXHIBIT 24 TAB 88	246	11	_____	_____
12	EXHIBIT 25 TAB 51	251	12	_____	_____
13	EXHIBIT 26 TAB 53	266	13	_____	_____
14	EXHIBIT 27 TAB 54	284	14	_____	_____
15	EXHIBIT 28 TAB 56	311	15	_____	_____
16	EXHIBIT 29 TAB 34	318	16	_____	_____
17	EXHIBIT 30 TAB 89	322	17	_____	_____
18	EXHIBIT 31 TAB 67	324	18	_____	_____
19	EXHIBIT 32 TAB 58	332	19	_____	_____
20	EXHIBIT 33 TAB 59	335	20		
21	EXHIBIT 34 TAB 90	341	21		Signature of Deponent
22	(Exhibits attached to transcript.)		22	SUBSCRIBED AND SWORN BEFORE ME	
23			23	THIS _____ DAY OF _____, 2021.	
24			24		
25			25	(Notary Public) MY COMMISSION EXPIRES:	_____